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MONTANA CONSTITUTIONAL CONVENTION

1971-1972

JUDICIARY COMMITTEE PROPOSAL

*No. V*

Date Reported: February 17, 1972

*David L. Holland*

Chairman

*William R. Roberts*

Vice Chairman

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STANDING COMMITTEE REPORT


February 17, 1972

Mr. President:

We the committee on Judiciary respectfully report as follows:

The Judiciary Committee Majority Proposal is ready to be duplicated and submitted to the Committee of the Whole for consideration; and

The Judiciary Committee Minority Proposal is ready to be duplicated and submitted to the Committee of the Whole for consideration.

  
Chairman

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Date: February 16, 1972

To: MONTANA CONSTITUTIONAL CONVENTION

From: Judiciary Committee

Ladies and Gentlemen:

The Committee on Judiciary hereby submits its recommendations contained in this report to the Montana Constitutional Convention.

The recommendations deal with the structure and organization of the supreme court, district courts and justice of peace courts.

The majority report, among other things, contains election of judges, tenure of judges and qualifications of judges. The report further contains recommendations for the elections of clerks of court and county attorneys.

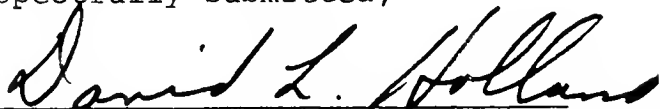
The minority of the committee has filed a minority report which contains recommendations for selection of judges on a basis different from the majority report. The minority report is in itself a complete judicial article and is entirely distinguishable from the majority report. Although the reports deal with similar subjects, they are entirely separate.

Recommendations contained in this report are of great concern to the people. Resolutions by the Convention will have profound effects upon the administration of justice and the nature and philosophy of our government. We regret

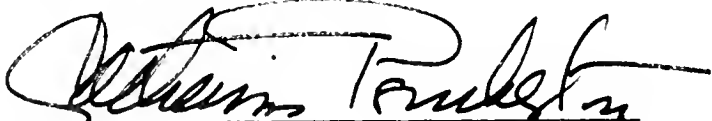
that complete consensus was not possible. We do report that all members of the committee worked diligently and the majority and minority reports are a consensus of the opinions of all persons signing them. While the members of the committee had philosophical differences, particularly about selection of judges, the entire committee, working on a difficult subject, wholeheartedly devoted their time and energy to their respective report.

The committee expresses their thanks to its Research Analyst, Sandra Muckelston, and to its Secretary, Ellen McCarthy, and to its administrative Interns, Dodge Leary and Katherine Sullivan.

Respectfully submitted,

A handwritten signature in cursive script, reading "David L. Holland".

DAVID L. HOLLAND, Chairman

A handwritten signature in cursive script, reading "Catherine Pemberton".

CATHERINE PEMBERTON, Vice-Chairman



MAJORITY PROPOSAL

1 BE IT PROPOSED BY THE JUDICIARY COMMITTEE:

2 That any proposed new constitution contain Article  
3 VIII of the present constitution amended to read as  
4 follows:

6 ARTICLE \_\_\_\_\_

7 THE JUDICIARY

8 Section 1. JUDICIAL POWER. The judicial power is  
9 vested in a supreme court, district courts, justice of the  
10 peace courts, and such other courts as the legislative  
11 assembly may establish.

12 Section 2. SUPREME COURT - APPELLATE JURISDICTION.  
13 The supreme court, except as otherwise provided in this  
14 constitution, shall have appellate jurisdiction only,  
15 which shall be co-extensive with the state.

16 Section 3. SUPREME COURT - APPELLATE JURISDICTION -  
17 WRITS. The appellate jurisdiction of the supreme court  
18 shall extend to all cases at law and in equity, subject,  
19 however, to such limitations and regulations as may be  
20 prescribed by law. Said court shall have power in its  
21 discretion to issue and to hear and determine writs of  
22 habeas corpus, mandamus, quo warranto, certiorari, pro-  
23 hibition and injunction, and such other original and  
24 remedial writs as may be necessary or proper to the  
25 complete exercise of its appellate jurisdiction. Each  
26 of the justices of the supreme court shall have power to  
27 issue writs of habeas corpus to any part of the state,  
28 upon petition by or on behalf of any person held in  
29 actual custody, and may make such writs returnable  
30 before himself, or the supreme court, or before any

1 district court of the state, or any judge thereof; and  
2 such writs may be heard and determined by the justice  
3 or court, or judge, before whom they are made returnable.  
4 Each of the justices of the supreme court may also issue  
5 and hear and determine writs of certiorari in proceedings  
6 for contempt in the district court, and such other writs  
7 as he may be authorized by law to issue.

8 Section 4. SUPREME COURT - TERMS. At least three  
9 terms of the supreme court, and such other terms as may  
10 be necessary to keep the docket current, shall be held  
11 each year at the seat of government.

12 Section 5. SUPREME COURT - COMPOSITION - DISQUALIFI-  
13 CATIONS. The supreme court shall consist of five justices  
14 a majority of whom shall be necessary to form a quorum or  
15 pronounce a decision, but one or more of said justices may  
16 adjourn the court from day to day, or to a day certain.  
17 The legislative assembly shall have the power to increase  
18 the number of justices to seven.

19 In case a justice or justices of the supreme court  
20 shall be in any way disqualified to sit in a cause brought  
21 before such court, the remaining justice or justices shall  
22 have power to call on one or more of the district judges  
23 of this state as in the particular case may be necessary  
24 to constitute the full number of justices of which the  
25 said court shall then be composed, to sit with them in  
26 the hearing of said cause. In all cases where a district  
27 judge is invited to sit and does sit as by this section  
28 provided, the decision and opinion of such district judge  
29 shall have the same force and effect in any cause heard  
30 before the court as if regularly participated in by a

justice of the supreme court.

1       Section 6. ELECTION AND TERM OF OFFICE OF SUPREME  
2 COURT JUSTICES. The justices of the supreme court shall  
3 be elected by the electors of the state at large, and  
4 the term of the office of the justices of the supreme  
5 court, except as in this constitution otherwise provided,  
6 shall be six years.

7       Section 7. CLERK OF SUPREME COURT. There shall be  
8 a clerk of the supreme court, who shall hold his office  
9 for the term of six years. He shall be elected by the  
10 electors at large of the state, and his compensation shall  
11 be fixed by law, and his duties prescribed by law and by  
12 the rules of the supreme court.

13       Section 8. JUSTICES OF SUPREME COURT - QUALIFICATIONS.  
14 A United States citizen who has been a resident of Montana  
15 for two years shall be eligible for the office of justice  
16 of the supreme court if admitted to practice law in  
17 Montana and experienced with the law in Montana for at  
18 least five years immediately prior to filing for or being  
19 appointed to the position of justice.

20       Section 9. DISTRICT COURTS - JURISDICTION. The  
21 district courts shall have original jurisdiction in all  
22 cases at law and in equity, including all cases which  
23 involve the title or right of possession of real property,  
24 or the legality of any tax, impost, assessment, toll or  
25 municipal fine, and in all cases in which the debt, damage,  
26 claim or demand, exclusive of interest and costs, or the  
27 value of the property in controversy exceeds \$300; and in  
28 all criminal cases amounting to felony, and in all cases  
29 of misdemeanor not otherwise provided for; of actions of  
30

1 forcible entry and unlawful detainer; of proceedings in  
2 insolvency; of actions to prevent or abate a nuisance;  
3 of all matters of probate; of actions of divorce and for  
4 annulment of marriage, and for all such special actions  
5 and proceedings as are not otherwise provided for. And  
6 said courts shall have the power of naturalization, and  
7 to issue papers therefor, in all cases where they are  
8 authorized so to do by the laws of the United States.  
9 They shall have appellate jurisdiction in such cases  
10 arising in justices and other inferior courts in their  
11 respective districts as may be prescribed by law and  
12 consistent with this constitution. Their process shall  
13 extend to all parts of the state, provided that all actions  
14 for the recovery of, the possession of, quieting the  
15 title to, or for the enforcement of liens upon real pro-  
16 perty, shall be commenced in the county in which the real  
17 property, or any part thereof, affected by such action or  
18 actions, is situated. Said courts and the judges thereof  
19 shall have power also to issue, hear and determine writs  
20 of mandamus, quo warranto, certiorari, prohibition, in-  
21 junction and other original and remedial writs, and also  
22 all writs of habeas corpus on petition by, or on behalf  
23 of, any person held in actual custody in their respective  
24 districts. Injunctions, writs of prohibition and habeas  
25 corpus, may be issued and served on legal holidays and  
26 non-judicial days.

27 Section 10. JUDICIAL DISTRICTS. The state shall  
28 be divided into judicial districts, in each of which  
29 there shall be elected by the electors thereof one or more  
30 judges of the district court as provided by law whose term

1 of office shall be four years. The legislative assembly  
2 may increase or decrease the number of judges in any  
3 judicial district; provided, that there shall be at least  
4 one judge in any district established by law; and may  
5 divide the state, or any part thereof, into new districts;  
6 provided, that each be formed of compact territory and be  
7 bounded by county lines, but no change in the number of  
8 boundaries of the districts shall work a removal of any  
9 judge from office during the term for which he has been  
10 elected or appointed. Any judge of the district court  
11 may hold court for any other district judge, and shall do  
12 so when required by law.

13 Section 11. WRITS OF ERROR AND APPEAL. Writs of  
14 error and appeal shall be allowed from the decisions of  
15 district courts to the supreme court under such regulations  
16 as may be prescribed by law.

17 Section 12. DISTRICT JUDGES - QUALIFICATIONS. No  
18 person shall be eligible to the office of judge of the  
19 district court unless engaged in the active practice of  
20 law in the state of Montana for at least five years prior  
21 to filing for or being appointed to the office of district  
22 judge, and in addition shall be a citizen of the United  
23 States and admitted to practice law in the supreme court  
24 of the state of Montana. He or she need not be a resident  
25 of the district for which elected at the time of election,  
26 but after election he or she shall reside in the district  
27 for which elected during the term of office.

28 Section 13. DISTRICT COURTS - BUSINESS DAYS - TERMS.  
29 The district court in each county which is a judicial  
30 district by itself shall be always open for the transaction

1 of business, except on legal holidays and non-judicial days.  
2 In each district where two or more counties are united,  
3 until otherwise provided by law, the judges of such district  
4 shall fix the terms of court as may be necessary to keep the  
5 docket current.

6 Section 14. CLERKS OF DISTRICT COURTS. There shall be  
7 a clerk of the district court in each county, who shall be  
8 elected by the electors of this county. The clerk shall be  
9 elected at the same time and for the same term as the  
10 district judge. The duties and compensation of the said  
11 clerk shall be provided by law except that the clerk in  
12 matters relating to procedure and the orderly conduct of the  
13 court room and court hearings shall be supervised by the  
14 district judge.

15 Section 15. COUNTY ATTORNEYS. There shall be elected  
16 at the general election in each county of the state one  
17 county attorney, who prior to taking office shall have been  
18 admitted to practice law before the supreme court of the  
19 state of Montana and must be of legal age at the time of  
20 taking office, and whose term of office shall be four years  
21 and until a successor is elected and qualified. He or she  
22 shall have a salary to be fixed by law, one-half of which  
23 shall be paid by the state, and the other half by the county  
24 for which elected, and shall perform such duties as may be  
25 required by law.

26 Section 16. JUSTICES OF THE PEACE - ELECTION -  
27 QUALIFICATIONS - COMPENSATION - JURISDICTION. There shall  
28 be elected in each county at least one justice of the peace  
29 with qualifications, training, and monthly compensation as  
30 provided by law, who shall hold office for the term of four

1 years. There shall be provided facilities for such justices  
2 so that their duties may be performed in dignified surround-  
3 ings. Justice courts shall have such original jurisdiction  
4 within their respective counties as may be prescribed by  
5 law. They shall not have trial jurisdiction in any criminal  
6 case designated a felony, except as examining courts. The  
7 legislature may provide for additional justices of the peace  
8 in each county or other types of courts below the district  
9 court level as is deemed necessary.

10 Section 17. APPEALS FROM JUSTICE COURTS. Justice  
11 courts shall always be open for transaction of business,  
12 except on legal holidays and non-judicial days. Appeal  
13 shall be allowed from justice courts, in all cases, to the  
14 district courts, in such manner under such regulations as  
15 may be prescribed by law.

16 Section 18. POLICE AND MUNICIPAL COURTS. The legisla-  
17 tive assembly shall have power to provide for creating such  
18 police and municipal courts and magistrates for cities and  
19 towns as may be deemed necessary from time to time, who shall  
20 have jurisdiction in all cases arising under the ordinances  
21 of such cities and towns, respectively; such police magis-  
22 trates may also be constituted ex-officio justices of the  
23 peace or magistrates for their respective counties.

24 Section 19. REMOVAL AND DISCIPLINE OF JUDGES. A  
25 Judicial Standards Commission is hereby created to consist  
26 of five persons, three of whom shall be judges. The three  
27 judges shall be selected by the justices and judges of the  
28 supreme court and district courts. Not more than one of  
29 the said three judges may be a member of the supreme court.  
30 The remaining two persons shall be citizens of the state of

1 Montana, selected and appointed by the governor. Neither of  
2 said two persons shall be a justice, judge or magistrate of  
3 any court or licensed to practice law in this state, nor  
4 shall they be a member of the executive, judicial or legisla-  
5 tive departments of the state of Montana. The original three  
6 judges shall be appointed for terms of one, three and five  
7 years respectively and the original gubernatorial appointees  
8 shall serve for two and four years respectively. Thereafter  
9 each commissioner shall serve for a term of five years. If  
10 a position in the Commission becomes vacant for any reason,  
11 the successor shall be selected by the original appointing  
12 authority in the same manner as the original appointment was  
13 made and shall serve for the remainder of the term vacated.  
14 No act of the Commission is valid unless concurred in by a  
15 majority of its members. The Commission shall select one of  
16 its members to serve as chairman.

17 In accordance with this section, any justice, judge or  
18 magistrate of any court may be disciplined or removed for  
19 willful misconduct in office or willful and persistent  
20 failure to perform his duties or habitual intemperance, or  
21 he may be retired for disability seriously interfering with  
22 the performance of his duties which is, or likely to become,  
23 of a permanent character. The Commission may, after investi-  
24 gation it deems necessary, order a hearing to be held before  
25 it concerning the discipline, removal or retirement of a  
26 justice, judge or magistrate, or the Commission may appoint  
27 three masters who are justices or judges of courts of record  
28 to hear and take evidence in the matter and to report their  
29 findings to the Commission. After hearing or after consider-  
30 ing the record and the findings and report of the masters,



1 if the Commission finds good cause, it shall recommend to  
2 the supreme court the discipline, removal or retirement  
3 of the justice, judge or magistrate.

4 The supreme court shall review the record of the pro-  
5 ceedings on the law and facts and may permit the introduction  
6 of additional evidence, and it shall order the discipline,  
7 removal or retirement as it finds just and proper or wholly  
8 reject the recommendation. Upon an order for his retire-  
9 ment, any justice, judge or magistrate participating in a  
10 statutory retirement program shall be retired with the same  
11 rights as if he had retired pursuant to the retirement  
12 program. Upon an order for removal, the justice, judge or  
13 magistrate shall thereby be removed from office, and his  
14 salary shall cease from the date of the order.

15 The Judicial Standards Commission shall make rules  
16 implementing this section and providing for confidentiality  
17 of proceedings.

18 Section 20. COURTS OF RECORD. The supreme and district  
19 courts shall be courts of record.

20 Section 21. LAWS RELATING TO COURTS - UNIFORM. All  
21 laws relating to the courts shall be general and of uniform  
22 operation throughout the state; and the organization, juris-  
23 diction, powers, proceedings and practice of all courts of  
24 the same class or grade, so far as regulated by law, shall  
25 be uniform.

26 Section 22. STYLE OF PROCESS. The style of process  
27 shall be "The State of Montana" and all prosecutions shall  
28 be conducted by the name and the authority of the same.

29 Section 23. FORM OF ACTION. There shall be but one  
30 form of civil action, and law and equity may be administered

1 in the same action.

2 Section 24. JUDICIAL COMPENSATION. The justices of  
3 the supreme court and the judges of the district court shall  
4 be paid monthly by the state, a salary, which shall not be  
5 diminished during the terms which they shall have been  
6 respectively elected. The salaries of justices of the peace  
7 shall be paid monthly by the counties or the state as may be  
8 prescribed by law. All salaries paid to justices and to  
9 judges shall be in an amount sufficient to attract capable  
10 and experienced lawyers to the judicial service.

11 Section 25. PROHIBITION OF OUTSIDE INCOME. No justice  
12 of the supreme court nor judge of the district court nor  
13 magistrate or justice of peace paid a monthly salary shall  
14 accept or receive any compensation, fee, perquisite or  
15 emolument for or on account of his office, in any form what-  
16 ever, except salary and actual necessary travel expense as  
17 provided by law.

18 Section 26. LAW PRACTICE PROHIBITED. No justice or  
19 clerk of the supreme court, nor judge or clerk of any  
20 district court shall act or practice as an attorney or  
21 counsellor at law in any court of this state during his  
22 continuance in office. Magistrates or justices of the  
23 peace shall not practice law in justice of the peace or  
24 magistrate courts.

25 Section 27. SUPREME COURT OPINIONS. All opinions of  
26 the supreme court shall be in writing and subscribed there-  
27 to by the concurring justices and the dissenting justices  
28 and such opinions and decisions shall be published in  
29 official reports of the supreme court. The legislative  
30 assembly may provide for the publication of decisions and

1 opinions of the supreme court.

2 Section 28. RESIDENCE OF JUDICIAL OFFICERS. All  
3 officers provided for in this Article, except justices of  
4 the supreme court, who shall reside within the state, shall  
5 respectively reside during their term of office in the  
6 district, county, township, precinct, city or town in which  
7 they may be elected or appointed.

8 Section 29. VACANCIES; NON-SUCCESSION OF APPOINTEE.  
9 Vacancies in the office of justice of the supreme court, or  
10 judge of the district court, or other appellate court, or  
11 clerk of the supreme court, shall be filled by appointment,  
12 by the governor of the state, and vacancies in the offices  
13 of county attorney, clerk of the district court, and other  
14 judicial offices, shall be filled by appointment, by the  
15 board of county commissioners of the county where such  
16 vacancy occurs. A person appointed to fill any such vacancy  
17 shall hold his office until the next general election and  
18 until his successor is elected and qualified. A person  
19 elected to fill a vacancy shall hold office until the  
20 expiration of the term for which the person he succeeds  
21 was elected.

22 No judicial officer hereafter appointed by the governor  
23 as provided in this section is eligible to be a candidate  
24 for judicial office for a period of one year after his  
25 successor has been elected.

26 Section 30. INELIGIBILITY FOR PUBLIC OFFICE. No  
27 justice of the supreme court or district judge shall hold  
28 any other public office, except that he may be a member of  
29 the Judicial Standards Commission, while he remains in the  
30 office to which he has been elected or appointed.

1           Section 31. JUDGE PRO TEMPORE. Civil actions in the  
2 district court may be tried by a judge pro tempore, who must  
3 be a member of the bar of the state, agreed upon in writing  
4 by the parties litigant, or their attorneys of record,  
5 approved by the court, and sworn to try the causes; and in  
6 such cases any order, judgment or decree, made or rendered  
7 therein by such judge pro tempore, shall have the same force  
8 and effect as if made or rendered by the court with the  
9 regular judge presiding.

10           Section 32. FORFEITURE OF JUDICIAL OFFICE. Any  
11 judicial officer who shall absent himself from the state  
12 for more than sixty consecutive days shall be deemed to  
13 have forfeited his office.

14  
15  
16  
17           David L. Holland  
18           David L. Holland, Chairman

19  
20  
21  
22           Cedric B. Aronow

23           Leslie Joe Eskildsen  
24           Leslie Joe Eskildsen

25           Rod Hanson  
26           Rod Hanson

27           John M. Schiltz  
28           John M. Schiltz

1 COMMENTS ON MAJORITY PROPOSAL

2 *Section 1. JUDICIAL POWER. The judicial power is*  
3 *vested in a supreme court, district courts, justices of the*  
4 *peace courts, and such other courts as the legislative*  
5 *assembly may establish.*

6 COMMENTS

7 (1) The proposed revision eliminates the vesting of  
8 judicial power in the senate sitting as a court of impeach-  
9 ment. Section 16, Article V of the 1889 constitution  
10 adequately covers this field. It is contemplated that any  
11 new legislative article will **retain** the impeachment provision.

12 (2) Vesting of judicial power in justices of the  
13 peace courts, rather than in "justices of the peace" as in  
14 the 1889 constitution, was done for parallel terminology.

15 (3) The 1889 constitution provided for vesting judicial  
16 power in "such other inferior courts as the legislative  
17 assembly may establish". This revision vests the power in  
18 "such other courts" in anticipation of a need in the future  
19 for intermediate appellate courts. This language permits  
20 that to be done.

21 *Section 2. SUPREME COURT - APPELLATE JURISDICTION.*  
22 *The supreme court, except as otherwise provided in this*  
23 *constitution, shall have appellate jurisdiction only, which*  
24 *shall be co-extensive with the state.*

25 COMMENTS

26 The revision deletes the supreme court's power of  
27 supervisory control over inferior courts. As written in  
28 the 1889 constitution, the power **was** given to the supreme  
29 court under such regulations and limitations as may be  
30 prescribed by law. Although the legislature has never

provided regulations, the supreme court in 1900 assumed the power to act supervisory - going so far as to invent a writ of supervisory control, unique in the United States. The use of the writ has grown to the point where it is used when other specifically authorized writs, or appeals, would serve as well. The provision was deleted as (1) unnecessary and (2) to avoid an unseemly avoidance of the express provisions of the 1889 constitution.

Section 3. SUPREME COURT - APPELLATE JURISDICTION - WRITS. The appellate jurisdiction of the supreme court shall extend to all cases at law and in equity, subject, however, to such limitations and regulations as may be prescribed by law. Said court shall have power in its discretion to issue and to hear and determine writs of habeas corpus, mandamus, quo-warranto, certiorari, prohibition and injunction, and such other original and remedial writs as may be necessary or proper to the complete exercise of its appellate jurisdiction. Each of the **justices** of the supreme court shall have power to issue writs of habeas corpus to any part of the state, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself, or the supreme court, or before any district court of the state, or any judge thereof; and such writs may be heard and determined by the justice or court, or judge, before whom they are made returnable. Each of the justices of the supreme court may also issue and hear and determine writs of certiorari in proceedings for contempt in the district court, and such other writs as he may be authorized by law to issue.

## COMMENTS



1 court shall then be composed, to sit with them in the hearing  
2 of said cause. In all cases where a district judge is  
3 invited to sit and does sit as by this section provided,  
4 the decision and opinion of such district judge shall have  
5 the same force and effect in any cause heard before the court  
6 as if regularly participated in by a justice of the supreme  
7 court.

#### 8 COMMENTS

9 The legislature is given the power to increase the number  
10 of justices on the supreme court from the present five to  
11 seven if the need arises. If the work load of the supreme  
12 court should increase, then the legislature may increase  
13 the number of justices by two without amending the consti-  
14 tution.

15 Section 6. ELECTION AND TERM OF OFFICE OF SUPREME  
16 COURT JUSTICES. The justices of the supreme court shall  
17 be elected by the electors of the state at large, and the  
18 term of the office of the justices of the supreme court,  
19 except as in this constitution otherwise provided, shall  
20 be six years.

#### 21 COMMENTS

22 Section 6 is a combination of Article VIII, Sections  
23 6 and 7 of the 1889 constitution.

24 Section 7. CLERK OF SUPREME COURT. There shall be a  
25 clerk of the supreme court, who shall hold his office for  
26 the term of six years. He shall be elected by the electors  
27 at large of the state, and his compensation shall be fixed  
28 by law, and his duties prescribed by law and by the **rules**  
29 of the supreme court.

#### 30 COMMENTS



This section is the adoption of Article VIII, Section 9 of the 1889 constitution, deleting from the former Section 9 the archaic language.

Section 8. JUSTICES OF SUPREME COURT - QUALIFICATIONS.  
A United States citizen who has been a resident of Montana for two years shall be eligible for the office of justice of the supreme court if admitted to practice law in Montana and experienced with the law in Montana for at least five years immediately prior to filing for or being appointed to the position of justice.

## COMMENTS

Article VIII, Section 10 of the 1889 constitution requires that for a person to be eligible for office of the supreme court he must (1) be admitted to practice law in the supreme court of Montana; (2) be at least thirty years of age; (3) be a citizen of the United States; (4) be a resident of Montana at least two years preceding his election.

The opinion of those signing the majority report is that the experience is more important than age; thus, the age requirement of Article VIII, Section 10 of the present constitution has been dropped and the individual's experience with law in Montana has been added.

Some discussion was had by members of those signing the majority report that five years practice before the courts of Montana should be required. It was decided that this would be unduly restrictive of those working with the law in a legal capacity for the government, as a law teacher, or in any way using their legal experience by working on legal matters. It was decided that as long as there was five years of experience in some field of law this was sufficient

1 requirement. The intention was to make the law experience  
2 entirely related to legal work.

3       Section 9. DISTRICT COURTS - JURISDICTION. The district  
4 courts shall have original jurisdiction in all cases at law  
5 and in equity, including all cases which involve the title  
6 or right of possession of real property, or the legality  
7 of any tax, impost, assessment, toll or municipal fine, and  
8 in all cases in which the debt, damage, claim or demand,  
9 exclusive of interest and costs, or the value of the  
10 property in controversy exceeds three hundred dollars; and  
11 in all criminal cases amounting to felony, and in all cases  
12 of misdemeanor not otherwise provided for; of actions of  
13 forcible entry and unlawful detainer; of proceedings in  
14 insolvency; of actions to prevent or abate a nuisance; of  
15 all matters of probate; of actions of divorce and for  
16 annulment of marriage, and for all such special actions  
17 and proceedings as are not otherwise provided for. And said  
18 courts shall have the power of naturalization, and to issue  
19 papers therefor, in all cases where they are authorized so  
20 to do by the laws of the United States. They shall have  
21 appellate jurisdiction in such cases arising in justices  
22 and other inferior courts in their respective districts as  
23 may be prescribed by law and consistent with this consti-  
24 tution. Their process shall extend to all parts of the  
25 state, provided that all actions for the recovery of, the  
26 possession of, quieting the title to, or for the enforcement  
27 of liens upon real property, shall be commenced in the county  
28 in which the real property, or any part thereof, affected by  
29 such action or actions, is situated. Said courts and the  
30 judges thereof shall have power also to issue, hear and

1 *determine writs of mandamus, quo warranto, certiorari, pro-*  
2 *hibition, injunction and other original and remedial writs,*  
3 *and also all writs of habeas corpus on petition by, or on*  
4 *behalf of, any person held in actual custody in their*  
5 *respective districts. Injunctions, writs of prohibition*  
6 *and habeas corpus, may be issued and served on legal holidays*  
7 *and non-judicial days.*

#### 8 COMMENTS

9 Section 9 is a re-enactment of Article VIII, Section 11  
10 of the 1889 constitution, changing only the minimum amount  
11 for jurisdiction from \$50.00 to \$300.00 and adding language  
12 of "exclusive of interest and costs". Some consideration was  
13 given by the committee to adopting simplified language to  
14 define jurisdiction of the district court by using the term  
15 "justiciable matters". Upon due consideration the committee  
16 decided that the term was not precise enough to fit the  
17 situation.

18 In all of the delegate proposals, citizens' suggestions  
19 and testimony heard by the committee concerning a new  
20 judicial article, no person made any complaint about juris-  
21 diction of the district courts as set forth above even  
22 though the section is not brief and concise. In view of  
23 the fact that it has existed in the constitution for 83  
24 years without causing difficulty and seems to have been  
25 fully defined by the courts, the majority decided to keep  
26 the language intact.

27 *Section 10. JUDICIAL DISTRICTS. The state shall be*  
28 *divided into judicial districts, in each of which there*  
29 *shall be elected by the electors thereof one or more judges*  
30 *of the district court as provided by law whose term of*

1 office shall be four years. The legislative assembly may  
2 increase or decrease the number of judges in any judicial  
3 district; provided, that there shall be at least one judge  
4 in any district established by law; and may divide the state,  
5 or any part thereof, into new districts; provided, that  
6 each be formed of compact territory and be bounded by  
7 county lines, but no change in the number or boundaries  
8 of the districts shall work a removal of any judge from  
9 office during the term for which he has been elected or  
10 appointed. Any judge of the district court may hold court  
11 for any other district judge, and shall do so when required  
12 by law.

#### 13 COMMENTS

14 Section 10 combines three sections from the 1889 con-  
15 stitution, to-wit: Article VIII, Sections 12, 13 and 14. The  
16 majority finds no necessity to change the existing judicial  
17 districts by amending the constitution. Under the 1889  
18 constitution, Article VIII, Section 14, the legislative  
19 assembly was granted the power to change the boundaries of  
20 districts and increase or decrease the number of judges.  
21 This power will again be given to the legislature.

22 Section 11. WRITS OF ERROR AND APPEAL. Writs of  
23 error and appeal shall be allowed from the decisions of  
24 district courts to the supreme court under such regulations  
25 as may be prescribed by law.

#### 26 COMMENTS

27 Section 11 is identical to Article VIII, Section 15  
28 of the 1889 constitution. All members signing the majority  
29 report felt no change was necessary.

30 Section 12. DISTRICT JUDGES- QUALIFICATIONS. No

1 person shall be eligible to the office of judge of the  
2 district court unless engaged in the active practice of law  
3 in the state of Montana for at least five years prior to  
4 filing for or being appointed to the office of district  
5 judge, and in addition shall be a citizen of the United  
6 States and admitted to practice law in the supreme court of  
7 the state of Montana. He or she need not be a resident  
8 of the district for which elected at the time of election,  
9 but after election he or she shall reside in the district for  
10 which elected during the term of office.

#### 11 COMMENTS

12 Section 12 changes Article VIII, Section 16 of the 1889  
13 constitution. The 1889 constitution provides that in order  
14 for a person to be eligible for office of judge of district  
15 court, he shall be (1) at least twenty-five; (2) citizen of  
16 the United States; (3) admitted to practice law in the  
17 supreme court of Montana; (4) residing in state of Montana  
18 at least one year.

19 After due consideration the majority of the committee  
20 felt that some of the foregoing requirements were valid but  
21 others should be changed. Thereupon the majority changed  
22 the requirements to (1) a citizen of the United States; (2)  
23 admitted to practice law in the supreme court of Montana;  
24 (3) must be engaged in active practice of law in Montana for  
25 five years prior to filing for or being appointed to the  
26 office of district judge. The requirement of experience was  
27 determined more valid than the requirement of age, the  
28 committee feeling that five years experience would give the  
29 necessary qualifications rather than a simple age requirement.  
30 The experience requirement for the district judges in this

1 section is materially different from the requirements for  
2 supreme court judges in Section 8. The committee felt that  
3 law teachers and others working with the law for five years  
4 was a sufficient requirement for a supreme court judge, be-  
5 cause the nature of the court is appellate rather than  
6 trial. A different type of experience and background is  
7 required for district judges who must function at the trial  
8 level.

9 The trial judge, in the opinion of the committee,  
10 needs trial experience which can only be gained in active  
11 practice of law and thus the requirement in Section 12 is  
12 five years in the active practice of law.

13 *Section 13. DISTRICT COURTS - BUSINESS DAYS - TERMS.*  
14 *The district court in each county which is a judicial dis-*  
15 *trict by itself shall be always open for the transaction of*  
16 *business, except on legal holidays and non-judicial days.*  
17 *In each district where two or more counties are united,*  
18 *until otherwise provided by law, the judges of such district*  
19 *shall fix the terms of court as may be necessary to keep*  
20 *the docket current.*

21 COMMENTS

22 Section 13 is identical with Article VIII, Section 17  
23 of the 1889 constitution except that the following language  
24 of Section 17 is deleted from Section 13: "provided that  
25 there shall be at least four terms a year held in each  
26 county"; the following language is added: "as may be nec-  
27 essary to keep the docket current." The majority of the  
28 committee felt that the number of terms of court should be  
29 adjusted in accordance with the volume of the case load of  
30 the court; so, rather than arbitrarily setting number of terms



1 of Montana and must be of legal age at the time of taking  
2 office, and whose term of office shall be four years and  
3 until a successor is elected and qualified. He or she  
4 shall have a salary to be fixed by law, one-half of which  
5 shall be paid by the state, and the other half by the  
6 county for which elected, and shall perform such duties as  
7 may be required by law.

8 COMMENTS

9 Section 15 is intended as a substitute for Article  
10 VIII, Section 19 of the 1889 constitution. The only  
11 difference between the two sections is that the age require-  
12 ment of Section 19 has been deleted, the majority of the  
13 committee feeling that this age requirement is unnecessary.

14 Section 16. JUSTICES OF THE PEACE - ELECTION -  
15 QUALIFICATIONS - COMPENSATION - JURISDICTION. There shall  
16 be elected in each county at least one justice of the peace  
17 with qualifications, training, and monthly compensation as  
18 provided by law, who shall hold office for the term of  
19 four years. There shall be provided facilities for such  
20 justices so that their duties may be performed in dignified  
21 surroundings. Justice courts shall have such original  
22 jurisdiction within their respective counties as may be  
23 prescribed by law. They shall not have trial jurisdiction  
24 in any criminal case designated a felony, except as  
25 examining courts. The legislature may provide for addi-  
26 tional justices of the peace in each county or other types  
27 of courts below the district court level as is deemed  
28 necessary.

29 COMMENTS

30 Sections 16 and 17 of the majority report are given in



1 full replacement of Article VIII, Sections 20, 21, 22 and  
2 23.

3 Section 16 requires that there be one justice of the  
4 peace in each county rather than two justices of peace in  
5 each township. Under the present Section 20 and inter-  
6 pretation of it, there must be two townships in each county  
7 and two justices of the peace to each township. Thus, a  
8 county, no matter how large or small, must have a minimum  
9 of four justices of the peace under Article VIII, Section  
10 20 of the 1889 constitution.

11 Instead of a minimum of four justices of the peace to  
12 each county, the majority proposal provides for a minimum  
13 of one for each county. The majority committee believes  
14 that in some counties one justice of the peace will be  
15 sufficient. However, if circumstances demand, the legisla-  
16 ture may provide for additional justices of the peace. The  
17 qualifications, training and monthly compensation of jus-  
18 tices of the peace are left to the legislature as is the  
19 jurisdiction of justice courts. The committee believes that  
20 this provision is sufficiently elastic to allow the legis-  
21 lature to create small claims courts.

22 The majority of witnesses appearing before the committee  
23 mentioned one consistent evil practiced under the 1889  
24 constitution regarding justice of the peace courts. This  
25 evil is that law enforcement officers have been filing cases  
26 in one of the justice of the peace courts to the exclusion  
27 of the other in the county because the law enforcement  
28 officers evidently believe that they have a better chance  
29 of conviction under one certain justice of the peace. Shop-  
30 ping for a form to secure conviction cannot be tolerated

1 under the law and thus each justice of the peace court  
2 should have exclusive jurisdiction within a territory  
3 within a county. The committee leaves it to the legisla-  
4 ture to accomplish this aim.

5 *Section 17. APPEALS FROM JUSTICE COURTS. Justice*  
6 *courts shall always be open for transaction of business,*  
7 *except on legal holidays and non-judicial days. Appeal*  
8 *shall be allowed from justice courts, in all cases, to*  
9 *the district courts, in such manner under such regulations*  
10 *as may be prescribed by law.*

11 COMMENTS

12 Section 17 covers the same area as Article VIII,  
13 Sections 22 and 23 of the 1889 constitution and is merely  
14 identical in this respect.

15 *Section 18. POLICE AND MUNICIPAL COURTS. The legisla-*  
16 *tive assembly shall have power to provide for creating such*  
17 *police and municipal courts and magistrates for cities and*  
18 *towns as may be deemed necessary from time to time, who*  
19 *shall have jurisdiction in all cases arising under the*  
20 *ordinances of such cities and towns, respectively; such*  
21 *police magistrates may also be constituted ex-officio*  
22 *justices of the peace or magistrates for their respective*  
23 *counties.*

24 COMMENTS

25 This is identical with Article VIII, Section 24 of the  
26 1889 constitution inasmuch as it permits the legislature to  
27 allow cities and towns to have police judges. Perhaps this  
28 is not needed if some other modern form of municipal govern-  
29 ment is established by this Convention but we do not know  
30 at this time if that is going to be done.

1       Section 19. REMOVAL AND DISCIPLINE OF JUDGES. A Judi-  
2       cial Standards Commission is hereby created to consist of  
3       five persons, three of whom shall be judges. The three  
4       judges shall be selected by the justices and judges of the  
5       supreme court and district courts. Not more than one of  
6       the said three judges may be a member of the supreme court.  
7       The remaining two persons shall be citizens of the state of  
8       Montana, selected and appointed by the governor. Neither of  
9       said two persons shall be a justice, judge or magistrate of  
10      any court or licensed to practice law in this state, nor  
11      shall they be a member of the executive, judicial or legis-  
12      lative departments of the state of Montana. The original  
13      three judges shall be appointed for terms of one, three and  
14      five years respectively and the original gubernatorial  
15      appointees shall serve for two and four years respectively.  
16      Thereafter each commissioner shall serve for a term of five  
17      years. If a position in the Commission becomes vacant for  
18      any reason, the successor shall be selected by the original  
19      appointing authority in the same manner as the original  
20      appointment was made and shall serve for the remainder of  
21      the term vacated. No act of the Commission is valid unless  
22      concurring in by a majority of its members. The Commission  
23      shall select one of its members to serve as chairman.

24      In accordance with this section, any justice, judge or  
25      magistrate of any court may be disciplined or removed for  
26      willful misconduct in office or willful and persistent  
27      failure to perform his duties or habitual intemperance, or  
28      he may be retired for disability seriously interfering with  
29      the performance of his duties which is, or likely to become,  
30      of a permanent character. The Commission may, after



1 Colorado, Idaho, Virginia, and Kansas constitutions as well  
2 as New Mexico, and have determined that the New Mexico pro-  
3 vision is more in keeping with the needs of Montana than  
4 those provisions appearing in other constitutions. It is  
5 the purpose of this section to provide for the situation,  
6 short of impeachment, where a judge because of age or other  
7 disability or bad habits becomes derelict in the performance  
8 of his duties. Under this provision his retirement or  
9 censure or removal from office can be accomplished without  
10 an undue amount of bad publicity to the judicial system or  
11 embarrassment to anyone concerned. In the event removal  
12 becomes necessary then the commission makes its recommendation  
13 to the supreme court who will look into the matter and may  
14 order a hearing in the matter, and then make such disposi-  
15 tion of the case as may be proper.

16 *Section 20. COURTS OF RECORD. The supreme and*  
17 *district courts shall be courts of record.*

18 COMMENTS

19 Section 20 is identical with Article VIII, Section 25  
20 of the 1889 constitution and the majority committee feels  
21 no necessity for change in this section.

22 *Section 21. LAWS RELATING TO COURTS - UNIFORM. All*  
23 *laws relating to the courts shall be general and of uniform*  
24 *operation throughout the state; and the organization,*  
25 *jurisdiction, powers, proceedings and practice of all*  
26 *courts of the same class or grade, so far as regulated by*  
27 *law, shall be uniform.*

28 COMMENTS

29 Section 21 is identical with Article VIII, Section 26  
30 of the 1889 constitution and the majority committee feels

1 no necessity for change in this section.

2 *Section 22. STYLE OF PROCESS. The style of all pro-*  
3 *cess shall be "The State of Montana" and all prosecutions*  
4 *shall be conducted by the name and the authority of the same.*

5 COMMENTS

6 Section 22 is identical with Article VIII, Section 27  
7 of the 1889 constitution and the majority committee feels no  
8 necessity for change in the section.

9 *Section 23. FORM OF ACTION. There shall be but one*  
10 *form of civil action, and law and equity may be administered*  
11 *in the same action.*

12 COMMENTS

13 Section 23 is identical with Article VIII, Section 28  
14 of the 1889 constitution and the majority committee feels no  
15 necessity for change in this section.

16 *Section 24. JUDICIAL COMPENSATION. The justices of*  
17 *the supreme court and the judges of the district court shall*  
18 *be paid monthly by the state, a salary, which shall not be*  
19 *diminished during the terms which they shall have been*  
20 *respectively elected. The salaries of justices of the peace*  
21 *shall be paid monthly by the counties or the state as may*  
22 *be prescribed by law. All salaries paid to justices and to*  
23 *judges shall be in an amount sufficient to attract capable*  
24 *and experienced lawyers to the judicial service.*

25 COMMENTS

26 This section is identical to Article VIII, Section 29  
27 of the 1889 constitution with the exception that the justices  
28 of the supreme court and the judges of the district court  
29 are paid monthly rather than quarterly. This conforms to  
30 the established practice now existing which is in fact in

disregard of the provisions of the 1889 constitution. An additional sentence has been inserted to provide that the salaries of the justices of the supreme court and judges of the district court will be in an amount sufficient to attract capable and experienced lawyers to the judicial service.

Section 25. PROHIBITION OF OUTSIDE INCOME. No justice of the supreme court nor judge of the district court nor magistrate or justice of peace paid a monthly salary shall accept or receive any compensation, fee, perquisite or emolument for or on account of his office, in any form whatever, except salary and actual necessary travel expense as provided by law.

## COMMENTS

Section 25 is a modification of Article VIII, Section 30 of the 1889 constitution, in that it allows actual necessary travel expense as provided by law whereas this was prevented under Section 30.

Section 26. LAW PRACTICE PROHIBITED. No justice or clerk of the supreme court, nor judge or clerk of any district court shall act or practice as an attorney or counsellor at law in any court of this state during his continuance in office. Magistrates or justices of the peace shall not practice law in justice of the peace or magistrate courts.

## COMMENTS

Section 26 is identical with Article VIII, Section 31 except the following sentence was added: "Magistrates or justices of the peace shall not practice law in justice of the peace or magistrate courts."

1 The upgrading of justice of peace courts is contemplated  
2 by Section 20 of the majority report. The committee believes  
3 that the legislature can allow a justice of peace or magistrate  
4 to practice law in other courts of the state of Montana while  
5 holding the office of justice of peace or magistrate, but  
6 they cannot allow a justice of peace or magistrate to  
7 practice law in justice of peace or magistrate courts. The  
8 majority committee feels that by allowing lawyers to hold a  
9 position as justice of peace and at the same time to practice  
10 in other courts would allow practicing lawyers to supplement  
11 income as a justice of peace by practicing in other courts.

12 Section 27. SUPREME COURT OPINIONS. All opinions of  
13 the supreme court shall be in writing and subscribed there-  
14 to by the concurring justices and the dissenting justices  
15 and such opinions and decisions shall be published in  
16 official reports of the supreme court. The legislative  
17 assembly may provide for the publication of decisions and  
18 opinions of the supreme court.

19 COMMENTS

20 The last sentence of Section 27 is identical with  
21 Article VIII, Section 32 of the 1889 constitution, except  
22 that a further requirement is made that all opinions of the  
23 supreme court shall be in writing and subscribed thereto by  
24 the dissenting justices. That portion which has been added  
25 is for the most part being done in practice, the majority  
26 of the committee feeling that this practice shall be made a  
27 requirement of the court.

28        *Section 28. RESIDENCE OF JUDICIAL OFFICERS. All*  
29        *officers provided for in this Article, except justices of*  
30        *the supreme court, who shall reside within the state, shall*



1 respectively reside during their term of office in the  
2 district, county, township, precinct, city or town in which  
3 they may be elected or appointed.

4 COMMENTS

5 Section 28 is identical to Article VIII, Section 33 of  
6 the 1889 constitution. The majority of the committee feels  
7 that Section 33 shall be adopted as Section 29 without change.

8 Section 29. VACANCIES; NON-SUCCESSION OF APPOINTEE.  
9 Vacancies in the office of justice of the supreme court, or  
10 judge of the district court, or other appellate court, or  
11 clerk of the supreme court, shall be filled by appointment,  
12 by the governor of the state, and vacancies in the offices  
13 of county attorney, clerk of the district court, and other  
14 judicial offices, shall be filled by appointment, by the  
15 board of county commissioners of the county where such  
16 vacancy occurs. A person appointed to fill any such vacancy  
17 shall hold his office until the next general election and  
18 until his successor is elected and qualified. A person  
19 elected to fill a vacancy shall hold office until the  
20 expiration of the term for which the person he succeeds  
21 was elected.

22 No judicial officer hereafter appointed by the governor  
23 as provided in this section is eligible to be a candidate  
24 for judicial office for a period of one year after his  
25 successor has been elected.

26 COMMENTS

27 The first paragraph of this section is identical to  
28 Article VIII, Section 34 of the 1889 constitution. The  
29 second paragraph is a new provision. The purpose of this  
30 new provision is to eliminate the advantage of the "created"

1 incumbent in a judicial election contest. The majority of  
2 the committee recognizes that there is a growing tendency for  
3 judges to retire during their terms so that the governor  
4 appoints a judge to serve until the next general election  
5 when the appointee then runs for the office as the incumbent.  
6 This appears to be an undue advantage in a system which  
7 provides for election of judges.

8 *Section 30. INELIGIBILITY FOR PUBLIC OFFICE. No jus-*  
9 *tice of the supreme court or district judge shall hold any*  
10 *other public office, except that he may be a member of the*  
11 *Judicial Standards Commission, while he remains in the office*  
12 *to which he has been elected or appointed.*

13 COMMENTS

14 Section 30 is identical with Article VIII, Section 35  
15 of the 1889 constitution except that the following language  
16 is added: "except that he may be a member of the Judicial  
17 Standards Commission". The 1889 constitution does not have  
18 the requirement for a Judicial Standards Commission and under  
19 Section 20 of the majority report, a Judicial Standards  
20 Commission is now part of the proposed judicial article.  
21 Three justices are required to sit on the Judicial Standards  
22 Commission and thus the foregoing membership on the  
23 Commission is excepted to make clear that there will be no  
24 violation by a justice or judge being a member of the Judi-  
25 cial Standards Commission.

26 *Section 31. JUDGE PRO TEMPORE. Civil actions in the*  
27 *district court may be tried by a judge pro tempore, who must*  
28 *be a member of the bar of the state, agreed upon in writing*  
29 *by the parties litigant, or their attorneys of record,*  
30 *approved by the court, and sworn to try the causes; and in*

1 such cases any order, judgment or decree, made or rendered  
2 therein by such judge pro tempore, shall have the same force  
3 and effect as if made or rendered by the court with the  
4 regular judge presiding.

5 COMMENTS

6 Section 31 of the majority report is identical with  
7 Article VIII, Section 36 of the 1889 constitution, except  
8 in Section 36 a civil action is changed to civil actions.  
9 This is self-explanatory.

10 Section 32. FORFEITURE OF JUDICIAL OFFICE. Any  
11 judicial officer who shall absent himself from the state  
12 for more than sixty consecutive days shall be deemed to  
13 have forfeited his office.

14 COMMENTS

15 Section 32 is identical with Article VIII, Section 37  
16 of the 1889 constitution.

SEPARATE MAJORITY PROPOSAL ON CAMPAIGN EXPENSES

BE IT PROPOSED BY THE JUDICIARY COMMITTEE:

That there be a section in the new judicial article to read as follows:

Section \_\_\_\_ . CAMPAIGN EXPENSES. The legislative assembly shall appropriate funds for the contested general election campaign expenses of candidates for the offices of justices of the supreme court and district court judges and shall enact laws regulating the amount, expenditure and disposition thereof. No candidate for justice of the supreme court or district court judge, nor any person or persons on his or her behalf, shall expend money in a campaign for the office in excess of the amount appropriated and authorized by the legislative assembly.

  
David L. Holland, Chairman

Catherine Pemberton, Vice Chairman

  
Cedar B. Aronow

Jean M. Bowman

  
Rod Hanson

  
J. Mason Melvin

  
John M. Schultz

Leslie "Joe" Eskildsen

  
Ben E. Berg, Jr.

1 COMMENTS ON SEPARATE MAJORITY PROPOSAL ON CAMPAIGN EXPENSES

2       Section \_\_\_\_\_. CAMPAIGN EXPENSES. The legislative  
3 assembly shall appropriate funds for the contested general  
4 election campaign expenses of candidates for the offices  
5 of justices of the supreme court and district court judges  
6 and shall enact laws regulating the amount, expenditure  
7 and disposition thereof. No candidate for justice of the  
8 supreme court or district court judge, nor any person or  
9 persons on his or her behalf, shall expend money in a  
10 campaign for the office in excess of the amount appropriated  
11 and authorized by the legislative assembly.

12 COMMENTS

13 Both the minority and majority proposals of the  
14 committee contemplate an election of judges, presumably  
15 in a non-partisan contest. In either case there will be  
16 the same problems we have always had: (1) the necessity  
17 that the judge demean himself and his position by seeking  
18 campaign funds; (2) the fact that the wrong people can  
19 make contributions; (3) the fact that lawyers are the  
20 biggest contributors and solicitors of campaign funds to  
21 the detriment of themselves than the candidate; (4) the  
22 fact that the candidate with the most money to spend is  
23 the more likely to win regardless of merit; and (5) the  
24 fact that the appearance of justice suffers in the process.

25 The committee majority proposes this special section  
26 as a means of curing the defects in election of judges  
27 and believes that the expense is warranted in view of the  
28 benefits to be obtained.

MINORITY PROPOSAL

1 BE IT PROPOSED BY THE JUDICIARY COMMITTEE:

2 That there be a new Article on the Judiciary to read  
3 as follows:

4  
5 ARTICLE \_\_\_\_\_

6 THE JUDICIARY

7 Section 1. JUDICIAL POWER. The judicial power of the  
8 state is vested in a supreme court and district courts and  
9 such other courts as may be provided by law.

10 Section 2. SUPREME COURT POWERS. The supreme court  
11 shall have final appellate jurisdiction and general super-  
12 visory and administrative control over all courts.

13 The supreme court may make rules for the practice of  
14 law and judicial administration in all courts.

15 The supreme court shall have such power to make rules  
16 of procedure as may be provided by law.

17 The supreme court shall have original jurisdiction to  
18 issue, hear and determine all writs appropriate to the  
19 exercise of its jurisdiction, including the writ of habeas  
20 corpus.

21 Section 3. SUPREME COURT ORGANIZATION. The supreme  
22 court shall consist of one chief justice and four justices,  
23 a majority of whom will be necessary to pronounce the  
24 decision, which must be in writing and signed by the majority.

25 The legislative assembly may increase the number of  
26 justices from five to seven.

27 District judges shall be substituted for the chief  
28 justice or the justices in the event of disqualification  
29 or disability, in any cause, and the opinion of the district  
30 judge sitting with the supreme court shall have the same

1 effect as an opinion of a justice of the supreme court.

2 Section 4. DISTRICT COURT POWERS. Original juris-  
3 diction of all matters and causes, both civil and criminal,  
4 including the power to issue, hear and determine original  
5 and remedial writs is vested in the district courts, but  
6 distribution of concurrent jurisdiction with other courts  
7 may be provided by law.

8 Until otherwise provided by law, appeals from inferior  
9 courts must be tried anew in the district court. District  
10 courts shall also have jurisdiction to review decisions of  
11 administrative boards and commissions and they shall have  
12 such additional jurisdiction as may be delegated by the laws  
13 of the United States and the state of Montana. The supreme  
14 court and district court process shall extend to all parts  
15 of the state.

16 Section 5. JUDICIAL DISTRICTS. The legislative  
17 assembly shall divide the state into judicial districts and  
18 provide for the number of judges in each district.

19 The legislative assembly shall have the power to  
20 change the number of judicial districts and their boundaries  
21 and the number of judges and magistrates in each district;  
22 however, each district shall be formed of compact  
23 territory and be bounded by county lines, but no changes  
24 in the number or boundaries of districts shall work a  
25 removal of any judge from office during the term for  
26 which he has been elected or appointed.

27 The chief justice may assign the district judge  
28 and other judges for temporary service from one district  
29 to another, and from one county to another.

30 Section 6. TERMS AND PAY OF JUDGES. Justices of the

1 supreme court, district court judges and other judges  
2 shall be paid as provided by law, but their salary shall  
3 not be diminished during their term of office.

4 Terms of office for supreme court justices shall be  
5 six years.

6 Terms of office for district court judges shall be  
7 four years.

8 Terms of office for other judges shall be provided  
9 by law.

10 Section 7. SELECTION OF JUDGES. In all vacancies in  
11 the offices of supreme court justices and district court  
12 judges caused by death, resignation, removal, retirement  
13 or failure of an incumbent judge to file a declaration of  
14 candidacy for a succeeding term of office, the governor of  
15 the state shall nominate a supreme court or district court  
16 judge from nominees selected in the manner provided by  
17 law. If the governor fails to nominate within thirty days  
18 after receipt of the names of the nominees, the chief  
19 justice or acting chief justice shall make the nomination.  
20 Each nomination shall be confirmed by the senate, but a  
21 nomination made while the senate is not assembled shall be  
22 effective as an appointment until the end of the next  
23 session of the senate. If the nomination is not confirmed  
24 by the senate the office shall be vacant and another selection  
25 and nomination shall be made.

26 Before the close of filings for nominations in the  
27 first primary election after senate confirmation, the name  
28 of the appointed judge shall be placed on a contested  
29 non-partisan ballot if other candidates have filed for  
30 election to that office. If there is no primary election



1 contest for the office, the name of the appointed judge  
2 shall nevertheless be placed on a ballot in the general  
3 election allowing voters of the state or district the choice  
4 of his approval or rejection. Thereafter, the elected  
5 judge shall be subject to approval or rejection in a  
6 general election for each succeeding term of office. In  
7 the event of rejection of a judge another selection and  
8 nomination shall be made in like manner.

9 Section 8. QUALIFICATIONS AND LIMITATIONS OF JUDGES.

10 No person shall be eligible to the offices of justice  
11 of the supreme court or judge of the district court unless  
12 he or she shall have been admitted to the practice of law  
13 in Montana for at least five years prior to the date of  
14 appointment or election, is a citizen of the United States,  
15 and has resided in the state of Montana two years immediately  
16 before taking office. Qualifications and methods of  
17 selection of judges of other courts shall be provided by  
18 law.

19 No supreme court justice or district court judge shall  
20 solicit or receive any compensation on account of his  
21 office, in any form whatever, except salary and actual  
22 necessary travel expense as provided by law.

23 Except as otherwise provided in this constitution, no  
24 supreme court justice or district court judge shall practice  
25 law during his term of office, engage in any other employ-  
26 ment for which salary or fee is paid, or hold office in a  
27 political party.

28 Filing for another elective public office results in  
29 forfeiture of judicial position.

30 A district judge must reside in his district during

1 his term of office.

2 Section 9. DISQUALIFICATION OF JUDGES. The legislature  
3 shall provide for disqualification of judges at any one or  
4 all of the inferior, trial and appellate court levels.

5 Section 10. REMOVAL AND DISCIPLINE OF JUDGES AND  
6 LAWYERS. There is created a Judicial Standards Commission  
7 consisting of three judges, selected by the district judges,  
8 of which not more than one can be a member of the supreme  
9 court; two members of the Montana Bar, and two citizens  
10 who do not hold any public office of the state of Montana  
11 or any office of a political party, appointed by the governor.  
12 Each vacancy on the Commission shall be filled in the same  
13 manner as the original appointment was made and the appointee  
14 shall serve for the remainder of the term vacated. No act  
15 of the Commission is valid unless concurred in by a majority  
16 of its members. The Commission shall select one of its  
17 members to serve as chairman. Its proceedings shall be  
18 confidential.

19 The Commission shall have the power to investigate,  
20 including power to subpoena witnesses and documents, upon  
21 complaint by any citizen or on its own motion, charges  
22 which could be the basis for retirement, censure or removal  
23 of any justice or judge or for the discipline, censure,  
24 suspension or disbarment of any practicing lawyer in the  
25 state of Montana. Upon finding charges to be well founded  
26 the Commission shall file a formal complaint before the  
27 supreme court. The supreme court shall hear such complaint,  
28 and if it be substantiated may retire, censure or remove  
29 any justice or judge or discipline, censure, suspend or  
30 disbar any practicing lawyer. If the complaint be

1 against a justice, the court shall call in a district judge  
2 as provided in Section 3 of this Article.

3 Section 11. CLERK OF THE SUPREME COURT. The chief  
4 justice shall appoint a clerk of the supreme court who  
5 shall hold office at the pleasure of the supreme court.

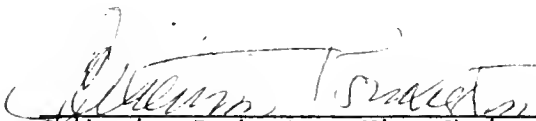
6 The salary and qualifications shall be fixed by law,  
7 and the duties of the office shall be prescribed by the  
8 supreme court.

9 Section 12. CLERK OF THE DISTRICT COURT. There  
10 shall be a clerk of each judicial district court in each  
11 county who shall be elected by the voters therein and  
12 who may appoint such deputies as provided by law.

13 The term of office, qualifications, and the compensa-  
14 tion of the district court clerk and deputies shall be  
15 provided by law.

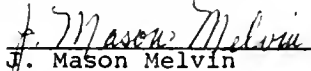
16 The duties of the clerk and deputies shall be pre-  
17 scribed by the district court judge and as provided by law.

18 Section 13. DISTRICT ATTORNEYS. There shall be  
19 elected district attorneys whose jurisdictional area,  
20 qualifications, term of office, salaries and duties shall  
21 be provided by law.

22  
23  
24  
25   
Catherine Pemberton, Vice Chairman

26  
27   
Ben E. Berg, Jr.

28   
Jean M. Bowman

29   
J. Mason Melvin  
30

1 COMMENTS ON MINORITY PROPOSAL

2 This minority proposed Judicial Article is truly a  
3 viable cornerstone for the establishment and operation of  
4 the courts of Montana. Its elasticity and flexibility are  
5 its strength; its clarity lends it force. Every delegate  
6 in this convention was requested by some of the electorate  
7 to assure brevity and simplicity in any constitutional  
8 revisions so that all could understand. The minority pro-  
9 posed Judicial Article measures up in these areas. Yet,  
10 none of the time-honored safeguards have been abandoned.  
11 Rather, in this proposal, citizens' choices and options have  
12 been enhanced, the Judiciary has been strengthened, and the  
13 entire Judicial system has been made more flexible to  
14 change and review by the people.

15 The Judiciary Committee has heard many witnesses.  
16 Some of the witnesses emphasized the importance of the  
17 independence of the Judiciary from the Legislative and  
18 Executive branches; others emphasized the importance of the  
19 judges being responsive to the law. It is submitted that  
20 the Judiciary must also be responsive to the lawgivers, the  
21 people.

22 This article was drawn with the idea that the Judicial  
23 branch must be as strong as the other two; that its officers  
24 be as free from obligation as humanly possible; and, that  
25 the choice of judicial officers be the responsibility of  
26 the Legislative and Executive branches and the voters.

27 *Section 1. JUDICIAL POWER. The judicial power of*  
28 *the state is vested in a supreme court and district courts*  
29 *and such other courts as may be provided by law.*

30 COMMENTS

1       The minority committee believes that this provision  
2 is broad and flexible enough to accommodate not only the  
3 existing inferior courts, including justice of the peace,  
4 police and municipal courts, but also for the implementa-  
5 tion of future courts.

6       The minority has deleted reference to a court of  
7 impeachment in the judicial article because it is an  
8 archaic, seldom used procedure and because it is adequately  
9 covered by Article V, Section 16 of the legislative article  
10 of the 1889 constitution where it more appropriately  
11 belongs.

12       It should be pointed out that by deleting reference to  
13 justice of the peace, there is no intention to abolish or  
14 affect the present jurisdiction and operation of these  
15 courts, but rather to leave assignment of judicial power  
16 in these courts exclusively to the legislature where there  
17 is wide latitude for improvement and alterations that will  
18 adjust to the varying complexities of rural and urban problems  
19 in the administration of justice on the lower level.

20       *Section 2. SUPREME COURT POWERS. The supreme court*  
21 *shall have final appellate jurisdiction and general super-*  
22 *visory and administrative control over all courts.*

23       *The supreme court may make rules for the practice of*  
24 *law and judicial administration in all courts.*

25       *The supreme court shall have such power to make rules*  
26 *of procedure as may be provided by law.*

27       *The supreme court shall have original jurisdiction to*  
28 *issue, hear and determine all writs appropriate to the*  
29 *exercise of its jurisdiction, including the writ of habeas*  
30 *corpus.*

1 COMMENTS

2 Final appellate jurisdiction is, by this section, vested  
3 exclusively in the supreme court. We employ the word "final"  
4 not only to indicate the place where litigation ends, but  
5 also to allow for intermediate appellate courts which may  
6 in the future become necessary to a speedy dispatch of  
7 justice. Like the federal constitution, the minority has  
8 not restricted or encumbered the appellate jurisdiction of  
9 the supreme court to "such limitations and regulations as  
10 may be provided by law". This change we believe to be  
11 consistent with the basic constitutional principle of  
12 separation of powers among the three principal departments  
13 of government. Similarly, the minority has eliminated the  
14 antique phrase "all cases in law and equity", believing this  
15 language to be archaic and a totally unnecessary distinction  
16 and restriction.

17 In addition to the unfettered appellate jurisdiction,  
18 the supreme court is given original jurisdiction to issue  
19 all writs and orders appropriate to the exercise of its  
20 powers. The minority proposal specifies only the writ of  
21 habeas corpus, but by this specification does not intend to  
22 exclude the use of other original writs enumerated in the  
23 1889 constitution. Likewise, we have removed the procedural  
24 provisions regarding the issuance and hearing of writs of  
25 habeas corpus because we think these provisions are purely  
26 statutory in character and because Article III, Section 21  
27 of the 1889 constitution adequately protects against the  
28 suspension of the privilege of a writ of habeas corpus.

29 To the general supervisory control which the 1889  
30 constitution granted the supreme court, the minority has

1 added administrative control. This addition was made to  
2 clarify the supervisory powers of the supreme court and to  
3 permit the supreme court to exercise centralized administra-  
4 tive direction for the entire judicial system. This power  
5 is further emphasized by the rule-making power in judicial  
6 administration. The minority does not believe that there  
7 is an immediate need for the employment of this power, but  
8 we see its probable need in the future. We conceive that the  
9 office of the clerk of the supreme court could be used by the  
10 supreme court as an agency to facilitate the administration  
11 of the judicial system and have therefore included the power  
12 in the supreme court to prescribe the duties of **its** clerk.  
13 (Section 11).

14 Rule-making power is categorized by the minority report  
15 into two classes. One class includes the practice of law  
16 and judicial administration of courts, which relate exclu-  
17 sively to the internal affairs of the judicial system.  
18 Powers in this regard are specifically lodged in the  
19 supreme court. The second class of rule-making power is  
20 restricted to rules of procedure and is intended to include  
21 both civil and criminal codes, but is specifically limited  
22 and qualified by the phrase "as provided by law" meaning,  
23 of course, that the rule-making power is actually reserved  
24 to the plenary power of the legislature as the lawmaking  
25 body of the State. It is believed that the making of rules  
26 of evidence properly belongs exclusively with the legislature  
27 because of the fine line between substantive and adjective  
28 law.

29 *Section 3. SUPREME COURT ORGANIZATION. The supreme*  
30 *court shall consist of one chief justice and four justices,*

1 a majority of whom will be necessary to pronounce the  
2 decision, which must be in writing and signed by the majority.

3 The legislative assembly may increase the number of  
4 justices from five to seven.

5 District judges shall be substituted for the chief  
6 justice or the justices in the event of disqualification  
7 or disability, in any cause, and the opinion of the district  
8 judge sitting with the supreme court shall have the same  
9 effect as an opinion of a justice of the supreme court.

10 COMMENTS

11 Except for the requirement that decisions of the  
12 supreme court must be in writing and be signed by the  
13 majority, which is included for the purpose of prohibiting  
14 per curiam unsigned decisions, the foregoing Section 3 is  
15 a condensed version of Article VIII, Section 5 of the 1889  
16 constitution. It does, however, permit the enlargement of  
17 the supreme court from five to seven justices including the  
18 chief justice. It makes no reference to quorums, calendars  
19 and procedure for adjournment of the court because the  
20 minority believes that these are provisions properly covered  
21 by the rules of court. Similarly, in a shorter paragraph  
22 we have provided for the seating of a district judge in the  
23 event of a disqualification of a supreme court justice.

24 Section 4. DISTRICT COURT POWERS. Original juris-  
25 diction of all matters and causes, both civil and criminal,  
26 including the power to issue, hear and determine original  
27 and remedial writs is vested in the district courts, but  
28 distribution of concurrent jurisdiction with other courts  
29 may be provided by law.

30 Until otherwise provided by law, appeals from inferior



1 courts must be tried anew in the district court. District  
2 courts shall also have jurisdiction to review decisions of  
3 administrative boards and commissions and they shall have  
4 such additional jurisdiction as may be delegated by the laws  
5 of the United States and the state of Montana. The supreme  
6 court and district court process shall extend to all parts  
7 of the state.

#### 8 COMMENTS

9 Brevity and clarity of expression have guided the  
10 minority in the drafting of this proposed judicial article.  
11 Our research has included a reasonably thorough study of  
12 other state constitutions. We were chagrined to find no  
13 other state constitution encumbered by the deliniation  
14 of various types of action included within the original  
15 jurisdiction of our principal trial courts as it is  
16 described in Article VIII, Section 11 of the 1889 constitu-  
17 tion. Moreover, we are apprehensive as to just how limited  
18 that jurisdiction may prove to be if the interpretive rule  
19 of expressio unis exclusio alternius (expression of one is  
20 the exclusion of others) is applied.

21 With these considerations in mind, the minority sought  
22 to provide district courts with broad and flexible jurisdic-  
23 tion, and, accordingly, substituted the language "all  
24 matters and causes" in lieu of the specifications contained  
25 in the old Section 11 of Article VIII. We considered the  
26 phrase "all justiciable causes" employed in the Illinois  
27 constitution and used in the North Dakota proposed judicial  
28 article, but from our research it appeared that the word  
29 "justiciable" is too vague to be meaningful and is therefore  
30 still open to a possible restrictive construction which we

1 seek to avoid. Accordingly, we preferred the unlimited words  
2 "all causes" used in the California judicial article pertain-  
3 ing to the superior courts, their courts of general trial  
4 jurisdiction. To this phrase we added the word "matters"  
5 to assure continued probate jurisdiction. To secure the  
6 vestment of the power in criminal proceedings we also added  
7 the phrase "both civil and criminal". To provide flexibility  
8 to the entire judicial system, we added the clause "but  
9 distribution of concurrent jurisdiction to other courts may  
10 be provided by law". By this clause it is intended to  
11 permit the legislature to assign concurrent jurisdiction to  
12 hear criminal matters not amounting to a felony and minor  
13 civil actions to inferior courts of limited jurisdiction.

14 By thus circumscribing original jurisdiction of the  
15 judicial power with legislative discretion, we were concerned  
16 that the legislature might effectively dessimate our district  
17 courts by vesting more and more judicial power in tribunals  
18 of its creation. To prevent this destructive abuse of  
19 power we have intentionally inserted the word "concurrent"  
20 as a limitation on that power, thereby forever leaving to  
21 the people the choice of appearing in any matter before  
22 either a constitutional or legislative court. Further, by  
23 the use of the word "concurrent" as applied to original  
24 jurisdiction, we intend to leave to the legislature the  
25 option of unifying the trial court levels if in the future  
26 that should appear desirable.

27 But we were not content to limit the district courts  
28 to original jurisdiction only, but foresaw the need for  
29 continued appellate jurisdiction over inferior courts and  
30 administrative boards and commissions. Hence, we specifically

1 provide for trial de novo on appeal from inferior courts,  
2 thereby avoiding excessive cost to parties in the prepara-  
3 tion of transcript upon appeal from the lower courts.

4 We have also accomodated future delegation of  
5 judicial power by the United States government or the state  
6 of Montana and have not limited it to the present power of  
7 naturalization as does Article VIII, Section 11 of the  
8 1889 constitution.

9 Finally, to make certain that both the supreme court  
10 and district courts are truly courts of statewide juris-  
11 diction, we have expressly declared that their processes  
12 extend to all parts of the state.

13 *Section 5. JUDICIAL DISTRICTS. The legislative*  
14 *assembly shall divide the state into judicial districts and*  
15 *provide for the number of judges in each district.*

16 *The legislative assembly shall have the power to*  
17 *change the number of judicial districts and their boundaries*  
18 *and the number of judges and magistrates in each district;*  
19 *however, each district shall be formed of compact territory*  
20 *and be bounded by county lines, but no changes in the*  
21 *number or boundaries of districts shall work a removal*  
22 *of any judge from office during the term for which he has*  
23 *been elected or appointed.*

24 *The chief justice may assign the district judge and*  
25 *other judges for temporary service from one district to*  
26 *another, and from one county to another.*

#### 27 COMMENTS

28 The minority believes that it is the prerogative of  
29 the legislature to divide the state into judicial districts  
30 because of the political characteristics of such disticts.

1 It is felt that the legislature is not only better equipped  
2 to maintain a district's political integrity, but it is  
3 altogether inappropriate for a court to become involved in  
4 political activity of any character. It is presumed, however,  
5 that the legislature will consult with the supreme court when  
6 providing for the number of judges in each district. Our  
7 position also prevents capricious action on the part of the  
8 legislature which might cause a judge to be removed from  
9 office. It is also doubtful, under this system of  
10 legislative deliberation, that a judge could be moved to  
11 a district or removed from his district because of an unpopu-  
12 lar decision.

13 *Section 6. TERMS AND PAY OF JUDGES. Justices of the*  
14 *supreme court, district court judges and other judges shall*  
15 *be paid as provided by law, but their salary shall not be*  
16 *diminished during their term of office.*

17 *Terms of office for supreme court judges shall be four*  
18 *years.*

19 *Terms of office for other judges shall be provided by*  
20 *law.*

#### 21 COMMENTS

22 By separate paragraphs, somewhat diminished in length,  
23 Sections 6, 12, 20, and 30 of Article VIII of the 1889  
24 constitution have been incorporated under the dual subject  
25 matter of Section 7.

26 *Section 7. SELECTION OF JUDGES. In all vacancies in*  
27 *the offices of supreme court justices and district court*  
28 *judges caused by death, resignation, removal, retirement or*  
29 *failure of an incumbent judge to file a declaration of*  
30 *candidacy for a succeeding term of office, the governor of*

1 the state shall nominate a supreme court or district court  
2 judge from nominees selected in the manner provided by law.  
3 If the governor fails to nominate within thirty days after  
4 receipt of the names of the nominees, the chief justice or  
5 acting chief justice shall make the nomination. Each  
6 nomination shall be confirmed by the senate, but a  
7 nomination made while the senate is not assembled shall be  
8 effective as an appointment until the end of the next session  
9 of the senate. If the nomination is not confirmed by the  
10 senate the office shall be vacant and another selection and  
11 nomination shall be made.

12 Before the close of filings for nominations in the  
13 first primary election after senate confirmation, the  
14 name of the appointed judge shall be placed on a contested  
15 non-partisan ballot if other candidates have filed for  
16 election to that office. If there is no primary election  
17 contest for the office, the name of the appointed judge  
18 shall nevertheless be placed on a ballot in the general  
19 election allowing voters of the state or district the  
20 choice of his approval or rejection. Thereafter, the elected  
21 judge shall be subject to approval or rejection in a  
22 general election for each succeeding term of office. In  
23 the event of rejection of a judge another selection and  
24 nomination shall be made in like manner.

25 COMMENTS

26 Throughout the judicial and political history of the  
27 United States there has always been and continues to be a  
28 great and important philosophical controversy between the  
29 concept of an independent judiciary and popular control  
30 of the courts. This controversy is manifested by the

1 variety of systems adopted by the various states ranging  
2 from lifetime appointment to the partisan election of judges.  
3 In our judicial committee the concepts polarized between  
4 the appointive merit system and the non-partisan election of  
5 judges. After prolonged discussion and vigorous arguments  
6 by strong advocates, the committee divided nearly equally  
7 with the chairman voting with the majority to make a 5-4  
8 split. As indicated, the committee's collective thought  
9 crystallized on the selection of judges.

10 The minority proposed Section 6 as an innovation to  
11 and a compromise with the existing methods of selection of  
12 judges. Yet, it does, we believe, include many of the best  
13 features of all plans. Thus, in synopsis, the minority plan  
14 incorporates non-partisan merit selection, gubernatorial  
15 nomination, senate confirmation, initial contested elections,  
16 and subsequent voter choice of approval or rejection of  
17 judges.

18 The purpose of the minority's plan is twofold; namely,  
19 to present to the voters judicial candidates whose qualifi-  
20 cations are recognized and to encourage better qualified and  
21 experienced lawyers to seek elevation to the judicial bench.  
22 It is the position of the minority that this system of  
23 selection will provide strong, able, impartial and independent  
24 judges who are still responsive to and elected by the people.

25 It is the minority's belief that today, few, if any, of  
26 the voters are at all acquainted with the judicial candidates  
27 and are totally uninformed of their education, background,  
28 experience and individual qualifications for a judgeship.  
29 We firmly believe that the survival of democratic  
30 institutions and representative government is directly

1 dependent upon an informed electorate, and we think the  
2 present system of elected judiciary utterly and complete-  
3 ly fails to attain that desired goal. We believe this is  
4 especially critical in the selection of judges who must be  
5 unselfishly devoted to the fair settlement of society's  
6 disputes. Their qualifications to perform this essential  
7 governmental function is the first and highest consideration.

8 To better insure the selection of qualified judges,  
9 the minority suggests that the legislature create a committee,  
10 bi-partisan in character, composed of both lawyers and  
11 laymen, but predominately laymen, who are geographically  
12 distributed throughout the state with at least one member  
13 from each judicial district. Preferably the committee should  
14 be elected by the legislature for staggered terms of three  
15 years so that one-third of its members are elected each  
16 annual session of the legislature. Members of the committee  
17 should not hold either public or political party offices  
18 and no member during his term of office may be a candidate  
19 for a judicial office.

20 The minority has purposely refrained from attempting  
21 to provide for the organization of the nominating committee  
22 in the belief that the legislature is better able to vigi-  
23 lantly oversee its operation.

24 The minority is not satisfied with the current process  
25 of unlimited gubernatorial appointive power of judges. In  
26 the light of statistics revealing that an overwhelming  
27 majority of our judiciary have been appointed by the governor,  
28 we are especially apprehensive of the future political  
29 character of our judges. Therefore, we have limited the  
30 governor's nomination to those nominees selected by a

1 committee, created by and dependent upon the legislature.  
2 This system, we believe, accords an effective check and  
3 balance.

4 Neither have we been content with the merit selection  
5 system alone, but noting the validity of recent congressional  
6 disapproval of presidential appointments to the United  
7 States supreme court, we have recognized the value of  
8 "advice and consent" feature of the United States constitu-  
9 tion and have incorporated it into our proposal by the  
10 requirement of senate confirmation.

11 The fourth distinct and important feature of the  
12 minority plan in the selection of judges, is, of course, a  
13 necessity to a democratic form of government, i.e., a  
14 competitive election of public officials. This prime  
15 essential is provided for at the first primary election  
16 following appointment. In this primary election any lawyer  
17 may file against the appointed judge and the two candidates  
18 receiving the highest vote will again compete against each  
19 other in the following general election. If no candidate  
20 files against the appointed judge in the primary election,  
21 nevertheless, the name of the appointed judge must appear  
22 on the general election ballot for acceptance or rejection  
23 by the voters. For every succeeding term the elected judge  
24 must submit to acceptance or rejection by the voters of his  
25 district or state.

26 To repeat, the minority recommends that this compre-  
27 hensive system of selection, nomination, confirmation and  
28 election of judges is a realistic and practical method of  
29 obtaining and keeping better judges by an informed electorate.

30 *Section 8. QUALIFICATIONS AND LIMITATIONS OF JUDGES.*



No person shall be eligible to the offices of justice of the supreme court or judge of the district court unless he or she shall have been admitted to the practice of law in Montana for at least five years prior to the date of appointment or election, is a citizen of the United States, and has resided in the state of Montana two years immediately before taking office. Qualifications and methods of selection of judges of other courts shall be provided by law.

No supreme court justice or district court judge shall solicit or receive any compensation on account of his office, in any form whatever, except salary and actual necessary travel expense as provided by law.

Except as otherwise provided in this constitution, no supreme court justice or district court judge shall practice law during his term of office, engage in any other employment for which salary or fee is paid, or hold office in a political party.

Filing for another elective public office results in forfeiture of judicial position.

A district judge must reside in his district during his term of office.

## COMMENTS

Paragraph one of this section is essentially the same as Section 10 of Article VIII, of the 1889 constitution except that it eliminates the age requirement as we feel that age isn't as important as knowledge and experience. It specifies five years of practice at law as a qualification for either a supreme court justice or a judge of the district court. It adds that the qualifications and methods of selection of judges of the other courts will be provided by law.



1 disqualification procedure for lower courts is provided for  
2 in the statutes, the supreme court has remained exempt. By  
3 this provision, the supreme court justices will also be  
4 subject to the similar requirements.

5       *Section 10. REMOVAL AND DISCIPLINE OF JUDGES AND*  
6 *LAWYERS. There is created a Judicial Standards Commission*  
7 *consisting of three judges, selected by the district judges,*  
8 *of which not more than one can be a member of the supreme*  
9 *court; two members of the Montana Bar, and two citizens*  
10 *who do not hold any public office of the state of Montana*  
11 *or any office of a political party, appointed by the governor.*  
12 *Each vacancy on the Commission shall be filled in the same*  
13 *manner as the original appointment was made and the*  
14 *appointee shall serve for the remainder of the term vacated.*  
15 *No act of the Commission is valid unless concurred in by a*  
16 *majority of its members. The Commission shall select one of*  
17 *its members to serve as chairman. Its proceedings shall be*  
18 *confidential.*

19       *The Commission shall have the power to investigate,*  
20 *including power to subpoena witnesses and documents, upon*  
21 *complaint by any citizen or on its own motion, charges*  
22 *which could be the basis for retirement, censure or removal*  
23 *of any justice or judge or for the discipline, censure,*  
24 *suspension or disbarment of any practicing lawyer in the*  
25 *state of Montana. Upon finding charges to be well founded*  
26 *the Commission shall file a formal complaint before the*  
27 *supreme court. The supreme court shall hear such complaint,*  
28 *and if it be substantiated may retire, censure or remove*  
29 *any justice or judge or discipline, censure, suspend or*  
30 *disbar any practicing lawyer. If the complaint be against*

1 *a justice, the court shall call in a district judge as*  
2 *provided in Section 3 of this Article.*

3 COMMENTS

4 It may seem contradictory to go into such detail in  
5 this section, but the minority feels that the seeming  
6 current distrust of the legal profession in general and the  
7 courts in particular warranted this detail, in an effort to  
8 allay this distrust and to give adequate avenue for redress  
9 by the public. In cases where censure or removal of a  
10 justice or judge is indicated, such action can be taken  
11 without the trauma caused by a public proceeding. At the  
12 same time it makes possible disciplinary action for reasons  
13 that are not of such magnitude as to warrant an impeachment  
14 proceeding.

15 In addition the minority feels that it is essential  
16 that the public be given the opportunity for redress of  
17 grievances against any practicing attorney. We feel that  
18 this section will do much to keep the legal profession at  
19 the high caliber that it must maintain if it is to be  
20 accorded the respect necessary to have the judicial system  
21 which we think Montana ought to have.

22 *Section 11. CLERK OF THE SUPREME COURT. The chief*  
23 *justice shall appoint a clerk of the supreme court who shall*  
24 *hold office at the pleasure of the supreme court.*

25 *The salary and qualifications shall be fixed by law,*  
26 *and the duties of the office shall be prescribed by the supreme*  
27 *court.*

28 COMMENTS

29 The functions of this office are administrative in  
30 nature and affect no policy change or formation. For this

1 reason the minority feels it is best to allow the supreme  
2 court to hire its own clerk. The clerk must work with the  
3 court, and even though he or she has dealings with the public,  
4 the clerk doesn't represent the people in the sense that a  
5 legislator does. We feel that a substantial portion of the  
6 voters don't know the candidate or candidates for the posi-  
7 tion and probably aren't very concerned with the position  
8 since no policy decisions are made.

9 In addition, again allowing for future innovation, if  
10 the position develops into an agency to facilitate  
11 administration of the judicial system, the court should  
12 have the prerogative to hire the person it feels is best  
13 qualified to perform the functions that it may prescribe.

14 *Section 12. CLERK OF THE DISTRICT COURT. There shall*  
15 *be a clerk of each judicial district court in each county*  
16 *who shall be elected by the voters therein and who may appoint*  
17 *such deputies as provided by law.*

18 *The term of office, qualifications, and the compensa-*  
19 *tion of the district court clerk and deputies shall be*  
20 *provided by law.*

21 *The duties of the clerk and deputies shall be prescribed*  
22 *by the district court judge as provided by law.*

#### 23 COMMENTS

24 This section is basically the same as Article VIII,  
25 Section 18 in the 1889 constitution, except that we have  
26 delegated to the legislature the duty of providing term of  
27 office, qualifications and compensation. Again, this merely  
28 allows flexibility.

29 It is felt that the clerk should have the privilege of  
30 appointing deputies, who in effect are working for him.

The minority also feels that the duties of the clerks and deputies should be provided not only by the legislature but also by the district court judge who will be working closely with the clerk.

5 By including the clerk of the court in this judicial  
6 article it is not intended to impair the consolidation of  
7 this office with other county offices as proposed by the  
8 Local Government Committee, but if the Committee on Style and  
9 Drafting determines there is conflict, the matter may be  
10 referred back to a joint conference of Judiciary and Local  
11 Government Committees.

12           Section 13. DISTRICT ATTORNEYS. There shall be elected  
13 district attorneys whose jurisdictional area, qualifications,  
14 term of office, salaries and duties shall be provided by law.

## COMMENTS

16 In an effort to write a document that will be applicable  
17 for many years, we deemed it best to change the title of  
18 county attorney to district attorney. It is entirely possible  
19 that eventually counties may decide to share services and  
20 a constitutional designation of a county attorney for each  
21 county would make transition in this area difficult. We  
22 have provided for legislative action concerning jurisdictional  
23 area, qualifications, term of office, salary and duties in  
24 keeping with our philosophy of flexibility. This section in  
25 no way precludes continuing the system of county attorneys  
26 that we now have; they will merely be called district  
27 attorneys instead.

UNANIMOUS PROPOSAL ON SEPARATE MATTER

BE IT PROPOSED BY THE JUDICIARY COMMITTEE:

That there be two sections in the new constitution to read as follows:

Section \_\_\_\_ . EXEMPTION LAWS. The legislative assembly shall enact liberal homestead and exemption laws.

Section \_\_\_\_ . PERPETUITIES. No perpetuities shall be allowed, except for charitable purposes.

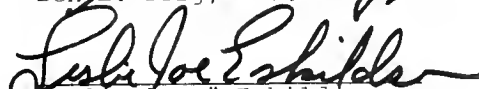
  
David L. Holland, Chairman


  
Catherine Pemberton, Vice Chairman

  
Cedor B. Aronow

  
Ben L. Berg, Jr.

  
Jean M. Bowman

  
Leslie Joe Eskildsen

  
Rod Hanson

  
J. Mason Melvin

  
John M. Schiltz

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COMMENTS ON UNANIMOUS PROPOSAL ON SEPARATE MATTER

*Section \_\_\_\_\_. EXEMPTION LAWS. The legislative assembly shall enact liberal homestead and exemption laws.*

COMMENTS

This language is identical with Article XIX, Section 4 of the 1889 constitution. All of the committee feel that no change shall be made in this constitutional section.

*Section \_\_\_\_\_. PERPETUITIES. No perpetuities shall be allowed, except for charitable purposes.*

COMMENTS

This language is identical with Article XIX, Section 5 of the 1889 constitution. All of the committee feel that no change shall be made in this constitutional section.



## APPENDIX A

### CROSS REFERENCES

#### I. MAJORITY PROPOSAL:

##### Proposed Section

##### Present Article & Section

1	VIII, 1
2	VIII, 2
3	VIII, 3
4	VIII, 4
5	VIII, 5
6	VIII, 6, 7
7	VIII, 9
8	VIII, 10
9	VIII, 11
10	VIII, 12, 13
11	VIII, 15
12	VIII, 16
13	VIII, 17
14	VIII, 18
15	VIII, 19
16	VIII, 20, 21
17	VIII, 22, 23
18	VIII, 24
19	New Section
20	VIII, 25
21	VIII, 26
22	VIII, 27
23	VIII, 28
24	VIII, 29
25	VIII, 30
26	VIII, 31
27	VIII, 32
28	VIII, 33
29	VIII, 34
30	VIII, 35
31	VIII, 36
32	VIII, 37

Sections Deleted:  
VIII, 8, 13

#### II. MAJORITY PROPOSAL (CAMPAIGN EXPENSES)

No cross reference

### III. MINORITY PROPOSAL

#### Proposed Section

#### Present Article & Section

1	VIII, 1
2	VIII, 2, 3
3	VIII, 5
4	VIII, 11, 23
5	VIII, 12, 14
6	VIII, 7, 12, 20, 29
7	VIII, 6, 12, 34
8	VIII, 10, 16, 30, 31, 33, 35
9	New Section
10	New Section
11	VIII, 9
12	VIII, 18
13	VIII, 19

Sections Deleted: VIII, 4,  
8, 13, 15, 17, 21,  
22, 24, 25, 26, 27,  
28, 32, 36, 37

### IV. UNANIMOUS PROPOSAL ON SEPARATE MATTER

#### Proposed Section

#### Present Article & Section

Exemption Laws	XIX, 4
Perpetuities	XIX, 5

## APPENDIX B

### PROPOSALS CONSIDERED BY COMMITTEE

The following delegate proposals were examined and considered by the Judiciary Committee during its deliberations:

	<u>Number of Proposal</u>	<u>Chief Sponsor</u>	<u>Subject Matter</u>	<u>Disposition</u>
1.	7	Earl Berthelson	Judicial Article	Adopted in Part by Majority and Minority
2.	30	Jerome J. Cate	Soverign Immunity	Referred to Bill of Rights
3.	34	Bob Campbell	Restoration of Rights	Referred to Bill of Rights
4.	38	Donald R. Foster	Citizen Participation in Government	Referred to Bill of Rights
5.	44	Jerome T. Loendorf	Judicial Article	Rejected
6.	53	Thomas M. Ask	Justices of Peace	Rejected
7.	69	Carl M. Davis	Prosecuting Attorneys	Rejected
8.	90	Geoffrey L. Brazier	Disqualifica- tion of Judges	Rejected
9.	92	Franklin Arness	Appeals and Inferior Courts	Rejected

	<u>Number of proposal</u>	<u>Chief Sponsor</u>	<u>Subject Matter</u>	<u>Disposition</u>
10.	137	Mike McKeon	Probate Court	Rejected
11.	145	Jerome T. Loendorf	Employees' Retirement System	Rejected
12.	149	Mike McKeon	Probate Court	Rejected
13.	155	Archie Wilson	Probate Administrator	Rejected
14.	159	Robert Lee Kelleher	Acts of Parliament	Rejected
15.	163	Veronica Sullivan	Fair and humane facilities	Suggested to send to Bill of Rights
16.	168	Robert Lee Kelleher	Rights of Convicted Felons	Rejected
17.	169	Robert Lee Kelleher	Access to Courts	Rejected
18.	174	Otto T. Habedank	Limitation on Due Process	Rejected
19.	176	Robert Lee Kelleher	Failure to Vote is Crime	Rejected

## APPENDIX C

### WITNESSES HEARD BY THE COMMITTEE

#### NAME - AFFILIATION - RESIDENCE- SUBJECT

1. Professor David Mason - Montana School of Law - Missoula -  
Proponent of the Montana Plan
2. Dean Robert E. Sullivan - Montana School of Law - Missoula -  
Proponent of the Montana Plan
3. Professor William "Duke" Crowley - Montana School of Law-  
Missoula - Proponent of the Montana Plan
4. Kenneth Davis - Montana Citizens for Court Improvement -  
Billings - Proponent of the Montana Plan
5. Stanley Lowe - Associate Director, American Judicature Society -  
Chicago - Proponent of the Montana Plan
6. William Bellingham - President, Montana Bar Association -  
Billings - Proponent of the Montana Plan
7. Earl Berthelson - Convention Delegate - Conrad - Proponent  
of the Montana Plan
8. Geoffrey Brazier - Convention Delegate - Helena - Courts in  
General; Delegate Proposal #90.
9. George Schotte - President, Montana Citizens for Court  
Improvement- Helena - Proponent of the Montana Plan
10. John Lane - Cascade County Interlocal Cooperation Committee  
representative - Helena - favored Montana Plan, appointment  
of judges and flexibility of lower courts.
11. Chief Justice J. T. Harrison - Supreme Court of Montana -  
Helena - endorsed Montana Plan
12. Judge Robert Keller - Montana District Court - Kalispell  
Appointment of judges; increased judicial compensation and  
other court problems.
13. Archie Wilson - Convention Delegate - Hysham - favored  
most parts of Montana Plan; Delegate Proposal #155.

14. Charles McNeil - Convention Delegate - Polson - Opponent of Montana Plan
15. Judge Victor Fall (retired) - Montana District Court - Helena - Endorsed a short judicial article with as much left to the legislature as possible.
16. Judge Paul Hatfield - President, Montana Judges' Association - Great Falls - Favored Judges' Plan of the Judicial article.
17. Claude Erickson - Montana Citizens for Court Improvement - Livingston - Proponent of Montana Plan.
18. Charles Moses - Attorney - Billings - Submitted short, flexible judicial article.
19. Conrad Fredricks - County Attorney - Big Timber - County Attorneys.
20. Judge E. Gardner Brownlee - Montana District Court - Missoula - Justices of the Peace; Opponent of Montana Plan
21. James Oleson - President, Montana County Attorneys Association - Kalispell - County Attorneys.
22. Bob Brooks - County Attorney - Broadus - County Attorneys.
23. Andrew G. Sutton - Secretary, Montana County Attorneys Association - Jordan - County Attorneys.  
Ass
24. Opal Eggert - Lobbyist, Elected County Officials of Montana- Justices of the Peace, Clerks of Court.
25. Sterling DePratu - Justice of the Peace - Fairfield - Justices of the Peace.
26. Ken D. Clark - Lobbyist, United Transportation Unions - Mile City - Justices of the Peace, Clerks of Court.
27. Walter Hammermeister - Sheriff and Peace Officer Association - Conrad - Justices of the Peace.
28. Thomas J. Kearney - Clerk of Montana Supreme Court - Helena - Clerks of Court.
29. Roger Barnaby - President, Montana Clerks of Court Association - Wibaux - Clerks of Court.
30. Elmer Erickson - Clerk of District Court - Chouteau - Clerks of Court.

31. Hardin E. Todd - Secretary, Montana Clerks of Court Association - Billings - Clerks of Court.
32. Francis Mitchell - Lobbyist, Montana Common Cause - Helena - Opponent of Montana; favored partisan election of supreme court justices and left the design of the court system to the supreme court.
33. J. Chan Ettien - Attorney - Havre - Opponent of the Montana Plan.
34. Joe Roberts - Law Student - Missoula - Justices of the Peace
35. John Mudd - Law Student - Missoula - Judicial Selection.
36. Judge Russell Smith - Montana Federal District Court - Missoula - Proponent of Montana Plan.
37. Barney Reagan - Ninth Judicial District Bar Association - Helena - Opponent of Montana Plan.
38. Harold McChesney - President, Montana Trial Lawyers Association - Missoula - Reported poll of his organization showing opposition to appointive judges and in favor of deleting constitutional reference to J. P. Courts.
39. John Hauf - Attorney - Billings - Judicial Selection.
40. Mrs. Bernice Wolf - Interested Citizen - Nashua - Courts in general.
41. Roy Crosby - Montana Citizens for Constitutional Government - Missoula - Opponent of Montana Plan and Delegate Proposal #44.
42. Judge W. W. Lessley - Montana District Court - Bozeman - Proponent of Montana Plan.
43. Judge Robert Wilson - Montana District Court - Billings - Proponent of Montana Plan.
44. Paul Keller - Attorney - Helena - Justice of the Peace Courts.
45. Luke McKeon - State Senator - Anaconda - Opponent of Montana Plan.
46. Joe Renders - Interested Citizen - Great Falls - Opponent of Montana Plan.

47. James T. Mular - Brotherhood of Railway and Airlines Clerks -Butte - Opponent of Montana Plan.
48. John Sullivan - Law Student - Missoula - Opponent of Montana Plan
49. Frank Arness - Convention Delegate - Libby - Delegate Proposal #92
50. A. W. Kamhoot - Convention Delegate - Forsyth - Delegate Proposal #155.
51. Henry Siderius - Convention Delegate - Kalispell - Delegate Proposal #155.
52. Tom Schneider - Executive Director, Montana Public Employees Association - Helena - Delegate Proposal #145.
53. Otto Habedank - Convention Delegate - Sidney - Delegate Proposal #174.
54. Jerome Loendorf - Convention Delegate - Helena - Delegate Proposals #44, 155
55. Carl Davis - Convention Delegate - Dillon - Delegate Proposal #69.
56. Tom Ask - Convention Delegate - Dillon - Delegate Proposal #53, 69.
57. Robert Kelleher - Convention Delegate - Billings - Judicial Selection.
58. Daphne Bugbee - Convention Delegate - Missoula - Judicial Selection.
59. Miles Romney - Convention Delegate - Hamilton - Judicial Compensation.
60. Ray Gulick - Interested Citizen - Joplin - Courts in General.
61. Robert Brooks, President, Montana Magistrates Association - Lewistown - Justice of the Peace Courts.



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## ROLL CALLS ON MAJORITY PROPOSAL

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## ROLL CALLS ON MAJORITY PROPOSAL ON CAMPAIGN EXPENSES

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# ROLL CALLS ON MINORITY PROPOSAL

[illegible]

## APPENDIX D

ROLL CALLS ON UNANIMOUS PROPOSAL, ON SEPARATE MATTER.

[illegible]

## ROLL CALLS ON UNANIMOUS PROPOSAL

[illegible]

